

0400-6168-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF AGRICULTURE

In the Matter of the Claims
against the Wholesale Produce
Dealer's Bond of Helgemoe's
Produce, Inc., Principal, United
Fire and Casualty Co. , Surety

E M INGS OF FACT,
CONCLUSIONS AND
REC " ENDATION

The above-entitled matter is pending before the undersigned Administrative Law Judge pursuant to a Notice and Order for Hearing dated January 22, 1992.

Lawrence H. Meuers, Meuers and Associates, P.A. , Attorneys at Law, 350 5th Avenue South, Suite 200, Naples, Florida 33940, appeared on behalf of Roland Marketing, Inc. (Claimant). Jim DeGrood, United Fire and Casualty, 5133 Heritage Hills Drive, Bloomington, Minnesota 55437, appeared on behalf of United Fire and Casualty Company (Surety). John G. Berg, Attorney at Law, 102 Sentinal Building, 5151 Edina Industrial Boulevard, Minneapolis, Minnesota 55439, initially appeared on behalf of Helgemoes Produce, Inc. (Principal). Subsequently, Mr. Berg withdrew as counsel for Principal and was replaced by Greg C. Gilbert , of John son, Killen, Thibodeau & Seiler, P. A. , 81 1 Norwest Center, 230 West Superior Street, Duluth, Minnesota 55802.

Notice is hereby given that, pursuant to Minn. Stat. 14.61 the final decision of the Commissioner of the Minnesota Department of Agriculture shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with the Elton A. Redalen, Commissioner, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107, telephone number (612) 297-3219.

STATEMENT OF ISSUES

The issues in this case are whether or not Claimant has a valid claim against Principal which should be paid by Surety under Surety's bond.

FINDINGS OF FACT

1. On January 22, 1992 a copy of the Notice and Order for Hearing was mailed to Claimant, Principal and Surety, as appears from an Affidavit of Mailing on file herein. It ordered that a contested case hearing be held on the validity of Claimant's claim against Principal on February 24, 1992.

On January 28, 1992, the hearing date was rescheduled to March 10, 1992.

2. At Claimant's request the March 10 hearing was continued and the hearing was rescheduled for March 25, 1992.

3. The March 25 hearing was cancelled because Principal agreed to resolve Claimant's claim for \$3,600. Through August 28, 1992 Principal paid only \$1,100 of the agreed settlement, leaving an unpaid balance of \$2,500.

4. On February 24, 1993 Claimant filed a Motion to Enforce Settlement and Payment from Bond. Copies of the Motion were served upon Principal and Surety as appears from an Affidavit of Service appended to the Claimant's Motion.

5. on February 26, 1993 the Administrative Law Judge issued an Order requiring any party wishing to contest Claimant's Motion to file and serve its written objections with the Administrative Law Judge within 10 days after receipt of the Order. In addition, the Order stated:

2. If any party, including Surety, fails to file objections to the Claimant's Motion within the time limits set forth in paragraph I [10 days], that party will be deemed in default and the relief requested by the Claimant will be granted by the Administrative Law Judge in a recommended order to the Commissioner of Agriculture recommending that he enforce the provisions of the Settlement Agreement and require payment of Principal's outstanding indebtedness to Roland Marketing, Inc., in the sum of \$2,500 from Surety's Bond or from Principal.

6. on March 3, 1993 the Administrative Law Judge received a facsimile transmission from Principals attorney indicating that Principal had filed a Chapter 7 bankruptcy petition on February 26, 1993 which would stay any proceedings against the Principal.

7. On March 5, 1993 the Administrative Law Judge notified the Principal, Claimant and Surety that proceedings against Principal should be stayed as a result of the bankruptcy petition it filed but that Surety must

still abide by the requirements in the February 26, 1993 Order and, if it failed to do so, a recommendation would be issued that the Commissioner of Agriculture require Surety to pay Claimant \$2,500 under Principal's Bond.

8. Surety failed to file objections to the Claimant's Motion to Enforce Settlement and Payment from Bond within the time period set forth in the Order of February 26, 1993.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Commissioner of Agriculture and the Administrative Law Judge have authority to consider the validity of Claimant's claim against Principal and to require Principal's indebtedness to Claimant to be paid by Surety under Minn. Stat. 27.06 and 14.50 (1990).

2. The Commissioner of Agriculture has complied with all substantive and procedural requirements of statute and rule.

3. Principal and Surety received timely and proper notice of the hearing.

4. Principal is indebted to Claimant in the amount of \$2,500, being the unpaid balance due to Claimant under Principal's Settlement Agreement.

5. Under Minn. Rules, pt. 1400.6000 (1991), the Administrative Law Judge may dispose of the contested case adverse to a party which defaults. Under the rule, a default occurs when a party fails to comply with any interlocutory order of the Administrative Law Judge.

6. Surety is in default herein for failing to file objections to Claimant's Motion to Enforce Settlement and Payment from Bond within the time limit set forth in the Administrative Law Judge's Order of February 26, 1993. As a result of its default, Surety should be ordered to pay Claimant \$2,500 being the unpaid balance due to Claimant under Principal's Settlement Agreement.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Commissioner of Agriculture issue an order requiring Surety, United Fire and Casualty Co., to pay Claimant, Roland Marketing, Inc., \$2,500, under Helgemoes Bond with Surety, for sums owed to Claimant by Helgemoes Produce, Inc.

Dated this day of March, 1993.

JON L. LUNDE
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14-62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Default